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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,114	11/13/2003	Robert J. Yatka	1391/1561	7674

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EXAMINER	
CORBIN, ARTHUR L	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
11/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/712,114	YATKA ET AL.	
	Examiner	Art Unit	
	Arthur L. Corbin	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02-06-06,10-31-07*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6,11,24-27 and 30-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6,11,24-27,30-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 6, 11, 24-27 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5,480,668, cols. 4-6 and claim 3) in view of Yatka et al (4,997,659, col. 6).). Nofre et al discloses mixing applicant's claimed N-substituted aspartame derivative and alitame, as claimed in claims 6 and 11, and then adding the mixture to chewing gum. It would have been obvious to add the sweetening agent mixture in Nofre et al, i.e. a combination of N-substituted aspartame derivative and alitame, to chewing gum as part of a rolling compound or coating on a chewing gum pellet since it is old to incorporate alitame in chewing gum as part of a rolling compound or chewing gum pellet coating, as evidenced by Yatka et al. Further, appellant's claimed panning procedure is well known according to Yatka et al (Abstract). 4. Claims 6, 11, 24-27 and 30-35 are also rejected under 35 U.S.C. 103 (a) as being unpatentable over Nofre et al (5,510,508, cols. 1 and 6) or Nofre et al (5,480,668, cols.

4-6 and claim 3) in view of Glass et al (4,374,858, col. 1, line 62 to col. 2, line 13 and col. 3, lines 1-12). Nofre et al (5,510,508) discloses inclusion of applicant's claimed N-substituted derivative of aspartame as a sweetener in chewing gum. Nofre et al (5,460,668) is described in the preceding paragraph. It would have been obvious to include the aspartame derivative in the chewing gum of either primary reference by applying it to the chewing gum as part of a rolling compound or as a coating since it is well known to apply aspartame to chewing gum as part of a rolling compound or as a coating, as evidenced by Glass et al. Further, applicant's claimed panning procedure is well known as set forth in the preceding paragraph.

5. Applicant's arguments filed February 6, 2006 and October 31, 2007 and the 132 declaration submitted October 31, 2007 have been fully considered but they are not persuasive. Applicant is referred to pages 2-4, Paper No. 20070515. Further, although neotame was not approved for use as a sweetener by the FDA until July, 2002, as applicant asserts, such approval by the FDA is not determinative of conventionality. The fact that neotame was disclosed as a sweetener in the primary references is sufficient to establish that it was well known for use as such in 1996, the date of said references.

The 132 declaration attempts to establish that neotame produces unexpected results in inhibiting bitterness in chewing gum. However, such unexpected results would also occur in either primary reference, which also uses applicant's claimed N-substituted aspartame derivative in chewing gum. Thus, said declaration is insufficient to establish the prima facie case of obviousness presented in the above rejections.

Declarant's comparison between neotame and aspartame is irrelevant with regard to the primary references. What applicant needs to show is that using the claimed sweetener in a coating or as part of a rolling compound would produce unexpected results over use of the same sweetener by simply adding said sweetener to other chewing gum components in the chewing gum soluble portion. Additionally, applicant's statement about Yatka's recollection with regard to the similarity between alitame and aspartame (page 6 of remarks) is hearsay and thus is entitled to no weight. Nevertheless, applicant also uses aspartame or alitame in combination with the claimed N-substituted aspartame derivative (claims 6 and 11), rather than said derivative alone as used in said declaration. Finally, it is worth noting that declarant's statements: "I think", "does not seem to be", and "it would appear" (paragraph 9 of declaration) make the declaration uncertain and its results questionable.

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arthur L. Corbin
Primary Examiner
Art Unit 1794

11-29-07